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## PALADIN LAW GROUP® LLP

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January 31, 2014

### ***Via E-Mail***

Stephen Berninger  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Re: Supplemental 104(e) Request for Information to John Locke  
Omega Superfund Site: 8915 Sorenson Avenue, Santa Fe Springs, CA

Dear Mr. Berninger:

This responds to EPA's supplemental request for information dated November 27, 2013 pursuant to CERCLA Section 104(e) to John Locke regarding 8915 Sorenson Avenue, Santa Fe Springs, California (the "Property"). EPA granted Mr. Locke an extension of time to respond until January 31, 2014.

While it is Mr. Locke's desire to cooperate with EPA to provide whatever information EPA feels is necessary to support its investigation, some of the supplemental requests ask for a new level of intrusively private and confidential information. Mr. Locke believes his right to privacy outweighs certain requests. Further, EPA's requests for private information is not justified by Mr. Locke's minimal contribution, if any, to the OU-2 groundwater plume. Therefore, Mr. Locke requests that EPA reconsider its requests in light of the following discussion.

EPA's authority to request information from PRPs is not unlimited. As you know, administrative information requests must be both reasonable and relevant to their investigative purpose. *See United States v. Morton Salt Co.*, 338 U.S. 632, 652-53 (1950) (quoted and applied to CERCLA section 104(e) in *United States v. Gurley*, 384 F.3d 316, 321-22 (6th Cir. 2004)). Although there is not a wealth of case law on the subject, it seems logical to suggest that the reasonableness of a section 104(e) information request, at least as it applies to "ability to pay" information of the type EPA is seeking in this case, must balance the intrusiveness of the information requested against the likelihood that the person from whom the information is requested will be called upon to contribute a substantial sum of money to the relevant cleanup effort. In other words, the more substantial the contribution is likely to be, the more intrusive EPA may be when requesting information in support of a person's ability to pay. Conversely, the more tangential or *de minimis* a person's contribution is likely to be, the less reasonable it is for EPA to request intrusively private financial information.

In this case, EPA is seeking several years' worth of Mr. Locke's tax returns as well as information related to confidential settlements. As we have already seen in this case, information provided to EPA pursuant

to section 104(e) requests immediately becomes part of the public record, which anyone can obtain with a simple FOIA request. While CERCLA and EPA regulations provide some protection for confidential information, those protections primarily apply to trade secrets and other business information that may interfere with a company's ability to compete. Private and confidential information of the type sought here does not appear to enjoy the same level of protection, if any at all. Thus, the reasonableness and intrusiveness of EPA's requests must be considered in light of the reality that EPA is essentially asking to publicize the information requested.

With respect to the extent to which Mr. Locke should be required to contribute to the remedy at OU-2, Mr. Locke repeats his long held position that releases associated with its activities on the Property have not contributed significantly, if any at all, to the regional groundwater contamination problem that is OU-2. Mr. Locke bases this position on the following facts:

- 1) Over ten years of groundwater monitoring data indicate that the contaminants flowing onto the Property in the deep aquifer from up gradient are substantially the same as those that flow off the Property down gradient;
- 2) Mr. Locke's experts have opined that contaminants in the vadose zone and shallow groundwater on the Property are not contributing to regional groundwater conditions in the deeper aquifer;
- 3) The Property has been, and continues to be, the subject of ongoing remediation efforts under the supervision of the California Department of Toxic Substances Control; and
- 4) Mr. Locke has already contributed well over \$2,000,000 toward response costs associated with the contamination on the Property.

Thus, Mr. Locke concludes that he has not contributed to the OU-2 plume or, at worst, its contribution should be considered *de minimis* and, given the ongoing remediation of the Property, that situation is unlikely to change in the future. Although Mr. Locke has presented EPA with the information he relies upon to support this conclusion, including a telephonic technical discussion, EPA's belief that Mr. Locke's contribution to the OU-2 plume is significant appears to remain unfazed. Mr. Locke, therefore, requests an in-person legal and technical meeting so that EPA may share with Mr. Locke evidence to support its position that Mr. Locke's liability is more than *de minimis* and that Mr. Locke has not already paid his fair share.

Because some of the information EPA is requesting in these supplemental requests is of an intrusively private and confidential nature that is not well protected once in EPA's hands and because Mr. Locke's contribution to the OU-2 regional groundwater plume, if any, is minimal, Mr. Locke does not believe that such requests are reasonable under the circumstances. In that light, Mr. Locke requests that EPA reconsider whether such information is necessary to support its investigative purpose. If, after reviewing this letter, EPA remains inclined to seek the information that Mr. Locke has asked it to reconsider, Mr. Locke also requests that EPA delay any action to enforce its information requests until the legal and technical meeting requested above can take place and both parties can review the information exchanged.

With the above in mind, the following are Mr. Locke's responses to EPA's requests:

1. State the full legal name, address, telephone number, positions(s) held by, and tenure of, the individual(s) answering any of these questions on behalf of John Locke concerning the matters set forth herein.

**Response to No. 1:**

John G. Locke, through Paladin Law Group® LLP, 3 W. Carrillo Street, Suite 212, Santa Barbara, CA 93101, (805) 898-9700.

2. Provide a copy of the personal federal income tax return (IRS Form 1040) for the years 2007-2012, as filed with the Internal Revenue Service, complete with all schedules and attachments.

**Response to No. 2:**

Mr. Locke respectfully requests that EPA reconsider whether disclosure of this private information is necessary in light of the above discussion.

3. Complete the form entitled "Statement of Net Worth" (enclosed).

**Response to No. 3:**

Mr. Locke respectfully requests that EPA reconsider whether disclosure of this private information is necessary in light of the above discussion.

4. With respect to Question 2(e) in your August 29, 2013 104(e) response, you state that Great American has denied coverage based on exhaustion of funds. Provide information which explains this denial of coverage and exhaustion of funds, including information regarding claims submitted by Angeles Chemical Co., Inc. ("Angeles") prior to May 12, 2012 and the outcome. Provide a description and the amounts of all insurance proceeds paid to Angeles, and provide information as to how the insurance proceeds have been spent or are planned to be used.

**Response to No. 4:**

In previous litigation regarding the Property, *Angeles Chemical Co, Inc., et al. v. McKesson Corporation, et al.* (U.S.D.C., Central District of California, Case No. CV 01-10532-TJH (MCx)), McKesson Corporation ("McKesson") filed counter-claims against Angeles, for which Great American was providing a defense along with Fireman's Fund Insurance Company. McKesson also filed cross-claims against Robert Berg, Donna Berg, Pearl Rosenthal and the Estate of Arnold Rosenthal, some of Angeles's former shareholders, directors and employees. The Bergs and Rosenthals then filed cross-claims against Angeles, for which Great American and Fireman's Fund were also providing a defense. Great American and Fireman's Fund reached settlements with McKesson [PROPC-CONTROLLED/PROPRIETARY] and with the Bergs and Rosenthals [PROPC-CONTROLLED/PROPRIETARY]. None of those funds were

paid to Angeles or Mr. Locke. Both insurers now claim that those settlements exhausted their policy limits.

5. With respect to Question 2 of your August 29, 2013 104(e) response, state whether you have now provided all of the information requested. Please note that the list of insurance policies to be provided is not limited to those that are still in existence, or which have not yet been exhausted. In addition, your response should include a description of the insured's efforts to file any claims relating to soil and/or groundwater contamination at the Property, under each policy, as well as the outcome of such efforts. To the extent that any additional information is available, provide it.

**Response to No. 5:**

Mr. Locke respectfully requests that EPA reconsider whether disclosure of this confidential information is necessary in light of the above discussion. In the previous *McKesson* litigation, referenced above, settlements were reached with several insurers in a settlement placed under seal by Judge Percy Anderson of the Central District Court. The associated settlement agreement is confidential and Mr. Locke is not at liberty to disclose it or any of its terms.

6. With respect to Question 3 in your August 29, 2013 104(e) response, you state that Angeles received two installments in connection with the McKesson Settlement Agreement totaling approximately [REDACTED] [REDACTED] PROP-C-Contr. [REDACTED]. Regarding the remaining settlement proceeds, state which individuals and/or entities were recipients, the amount(s) allocated, and provide information as to how the settlement proceeds have been spent or are planned to be used.

**Response to No. 6:**

The remaining proceeds were disbursed directly to counsel for attorney's fees and litigation expenses and to Greve Financial Services, Inc. for litigation expenses and previously incurred response costs.

7. With respect to the January 31, 2001 Agreement entered between Greve Financial Services, Inc. and Angeles provided with your August 29, 2013 104(e) response, state whether Angeles received proceeds from Greve Financial Services, Inc.'s sale of the Property pursuant to the conditions set forth in paragraph 8. If the answer is "yes," provide the amount(s) and date(s) of payment, and describe how the proceeds have been spent or are planned to be used.

**Response to No. 7:**

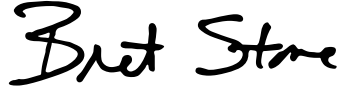
No. Greve Financial Services, Inc. did not sell the property, but rather it was "foreclosed" upon by the current owner, Fernal Properties, Inc., for non-payment of an alleged promissory note secured by the Property. Greve subsequently declared bankruptcy and dissolved. Note, however, that the previous owner and sole shareholder of Greve, Joseph Kennedy, is also the current owner and sole shareholder of Fernal. Mr. Locke believes that the promissory note and subsequent foreclosure were a deliberate

and fraudulent scheme to avoid Greve's obligations in its real estate purchase agreement with Angeles. Nonetheless, with respect to Question 7 the result is the same – Angeles and Mr. Locke received nothing from that ownership transfer.

If you would like to discuss this matter in further detail, please do not hesitate to call.

Very truly yours,

By:

A handwritten signature in black ink that reads "Bret Stone". The signature is written in a cursive, slightly stylized font.

Bret A. Stone

PALADIN LAW GROUP® LLP

cc: client